

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SANDRA PRUITT
Plaintiff,

v.

BANK OF AMERICA, N.A., *et al.*,
Defendants.

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* Civil Action No. PX 8:15-cv-01310

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MEMORANDUM OPINION AND ORDER

On September 14, 2016, Defendant Bank of America, N.A. (“BANA”) filed a motion to compel discovery and for sanctions (ECF No. 35) alleging that interrogatories propounded upon Plaintiff on May 6, 2016 went unanswered, and requesting sanctions should Plaintiff fail to appear at her September 22, 2016 deposition. In support, Defendant BANA states that on July 13, 2016, counsel sent correspondence to Plaintiff requesting that she respond to the May 6, 2016 interrogatories by July 23, 2016 (ECF No. 35-3). Plaintiff has yet to respond. In their September 27, 2016 motion to modify the scheduling order (ECF No. 36), Defendants BANA and Bank of New York Mellon claim that Plaintiff failed to appear at her September 22, 2016 deposition.¹ Pointing to Plaintiff’s alleged lack of participation in discovery, Defendant BANA’s motion to compel and for sanctions seeks an order prohibiting Plaintiff from supporting or disputing any claims or defenses with documents or other information not disclosed in response to Defendants’ discovery requests, striking all portions of Plaintiff’s Complaint covered by discovery, and any other relief available pursuant to Federal Rule of Civil Procedure 37(b). Plaintiff has not responded to either of Defendant’s motions.

¹ Defendants’ motion to modify the scheduling order was granted on September 28, 2016. ECF No. 37.

Rule 37(d) provides that a party's failure, after being served with proper notice, to attend his own deposition or to serve responses to discovery may be sanctioned by the court as provided in Rule 37(b)(2)(A). Fed. R. Civ. P. 37(d)(1), (3). Rule 37(b)(2)(A) states that appropriate sanctions for failure to obey a discovery order include "dismissing the action or proceeding in whole or in part;" Fed. R. Civ. P. 37(b)(2)(A).

Plaintiff is hereby ordered to provide full and complete responses to Defendant's interrogatories by October 21, 2016. Plaintiff is also ordered to attend a deposition at a date mutually agreed upon by both parties, but no later than October 26, 2016. A pro se litigant is not immune from sanctions for failing to comply with the Court's orders. "Pro se litigants are entitled to some deference from courts . . . But they as well as other litigants are subject to the time requirements and respect for court orders without which effective judicial administration would be impossible." *Ballard v. Carlson*, 882 F.2d 93, 96 (4th Cir. 1989) (internal citations omitted). Plaintiff's failure to obey this Memorandum Opinion and Order may result in sanctions, including dismissal of the action, upon motion by the Defendant. *Hathcock v. Navistar Intern. Transp. Corp.*, 53 F.3d 36, 40 (4th Cir. 1995) ("the express terms of Rule 37 permit a trial court to impose sanctions when 'a party fails to obey an order to provide or permit discovery.'").

Defendant BANA's request for an order for sanctions pursuant to Federal Rule of Civil Procedure 37(b) is premature because only after a party "fails to obey *an order* to provide or permit discovery" are sanctions appropriately triggered. Fed. R. Civ. P. 37(b)(2)(A) (emphasis added); see *Fisher v. Fisher*, No. WDQ-11-1038, 2012 WL 2873951, at *1 (D. Md. July 12, 2012) ("Rule 37(b)(2)(A) applies only when a party has failed to obey a court order—specifically, a discovery order." (citation and internal quotation marks omitted)). Here, Plaintiff's

failure to provide discovery has not, to this point, contravened any court order. Accordingly, Defendant BANA's motion will be denied as to Rule 37(b) sanctions.

Accordingly, it is this 4th day of October, 2016, by the United States District Court for the District of Maryland, ORDERED that:

1. Defendant Bank of America, N.A.'s motion to compel discovery and for sanctions (ECF No. 35) BE, and the same hereby IS, GRANTED in PART and DENIED in PART;
2. Plaintiff is directed to provide full and complete responses to the requests propounded by Defendant Bank of America, N.A., by no later than October 21, 2016 or be subject to sanctions, including dismissal;
3. Plaintiff is further directed to attend a deposition at a date mutually agreed upon by both parties, but no later than October 26, 2016, or be subject to sanctions, including dismissal; and
4. The clerk shall transmit copies of this Memorandum Opinion and Order to Plaintiff and counsel for Defendants.

Date: October 4, 2016

/s/
The Honorable Paula Xinis
United States District Court